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MEMORANDUM

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FROM: Ernest G. Johnson  
Director  
Utilities Division

*EA for EGT*

2005 OCT 26 P 12: 08

AZ CORP COMMISSION  
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DATE: October 25, 2005

RE: IN THE MATTER OF U S WEST COMMUNICATIONS, INC.'S COMPLIANCE WITH §271 OF THE TELECOMMUNICATIONS ACT OF 1996; QWEST CORPORATION'S APPLICATION FOR WAIVER FROM INDEPENDENT AUDIT REQUIREMENT OF DECISION NO. 64836; QWEST CORPORATION'S REVISED APPLICATION FOR WAIVER FROM INDEPENDENT AUDIT REQUIREMENT OF DECISION NO 64836 AND PROPOSED SCOPE OF AUDIT; DOCKET NO. T-00000A-97-0238

**I. Introduction**

On March 29, 2005, Qwest Corporation ("Qwest") filed an Application for Waiver from the Independent Audit Requirement of Decision No. 64836 based on its assertions that the audit was unnecessary.

By Procedural Order dated April 20, 2005, the Commission set deadlines for responding to Qwest's Application for Waiver.

Pursuant to the April 20, 2005, Procedural Order, Dieca Communications, Inc. d/b/a Covad Communications Company ("Covad") filed a response on May 11, 2005.

The April 20, 2005 Procedural Order also provided that Commission Utilities Division Staff ("Staff") should file a Staff Report on the request by May 31, 2005.

On April 20, 2005, Qwest and Staff notified the Hearing Division, that Qwest desired to talk with Covad about its objections, and expressed the belief that the Staff Report would be more fully informed after the results of the Qwest/Covad discussions are known. Qwest and Staff requested an extension of the deadline for the Staff Report. Qwest requested an indefinite extension pending a notice from Qwest that discussions were complete.

By Procedural Order dated May 27, 2005, the Commission indefinitely extended the May 31, 2005 Staff Report deadline pending further Order of the Commission.

At a Procedural Conference on June 1, 2005, Qwest and Covad reported that they were engaging in discussions that might resolve issues raised by Covad.

By Procedural Order dated June 13, 2005, the Commission scheduled a procedural conference for July 6, 2005 to determine the status of the parties' discussions.

The June 13, 2005, Procedural Order provided that Qwest's obligations under Decision No. 64836 to engage in a third-party audit were suspended pending Commission resolution of the waiver request.

At the July 6, 2005 Procedural Conference, the parties reported that although the discussions between Qwest and Covad had not resolved their differences, the parties, including Staff, were still engaged in discovery and recommended that the Commission convene another status conference in approximately 30 days.

In a Procedural Conference on August 4, 2005, Qwest indicated that it intended to file a revised waiver request and requested at least 30 days to have that docketed. No party objected.

By Procedural Order dated August 9, 2005, the Commission ordered that Qwest file its revised waiver request by September 6, 2005; that interested parties file comments on Qwest's revised waiver request by September 27, 2005; and that Staff file its Staff Report containing its analysis of the request and recommendations for Commission action by October 18, 2005.

By Procedural Order dated September 13, 2005, the Commission revised its Procedural Order of August 9<sup>th</sup>, ordering that Qwest file its revised waiver request by September 20, 2005; that interested parties file comments on Qwest's revised waiver request by October 4, 2005; and that Staff file its Staff Report containing its analysis of the request and recommendations for Commission action by October 25, 2005.

Staff hereby files its Staff Report to address Qwest's application, revised application and issues raised by Covad.

## **II. Qwest's Position:**

In its March 29, 2005 application, Qwest presented the following reasons to support its filing for relief from the independent audit required by Decision No. 64836.

1. CLECs are successfully accessing Qwest's loop qualification data on a non-discriminatory basis, as evidenced by the lack of audit requests for loop qualification tools.
2. The number of manual requests for loop make-up in Arizona are [is] miniscule, and rarely result in a need for Qwest to update its loop qualification database.
3. Earlier CLEC speculation about missing loop qualification data has not materialized.

Following discussions with Covad and Staff, Qwest submitted a revised application on September 6, 2005.

Rather than a waiver of the audit requirement, Qwest's revised application proposes an audit that addresses the update frequency of the Raw Loop Data Wire Center data file and the availability of any bulk loop make-up information by Qwest personnel.

### **III. Covad's Position:**

In its May 11, 2005 response, Covad states "Covad has experienced measurable difficulties with Qwest's loop qualification data that, in many instances, has resulted in inaccurate or incomplete data regarding a particular loop." Covad offered the following principal reasons for the unsatisfactory service it has received:

1. Qwest only provides loop information once every thirty days to its wholesale customers.
2. Qwest provides a real time loop tool for its own use but not to its wholesale customers.

Covad's October 4, 2005 response to Qwest's September 6, 2005 revised application can be summarized as follows:

1. Qwest's proposal for a limited audit does not address Covad's access concerns.
2. Only an independent audit can fully evaluate the loop qualification situation.
3. Qwest may still be discriminating against Covad in favor of itself.
4. The burden rests with Qwest to demonstrate why a waiver should be granted.
5. The ROC OSS testing has no bearing on the loop qualification audit.

### **II. Staff's Analysis**

- 1. Is there sufficient evidence that CLECs are dissatisfied with Qwest's loop qualification tools?**

Although many unknown factors may be involved, Staff does note from data request responses by Qwest that approximately REDACTED CLECs<sup>1</sup> within Qwest's 14 state ILEC region have accessed Qwest's loop qualification tools over REDACTED times in the last 16 months and no CLECs, including Covad, have asked for loop qualification audits as part of their interconnection agreements.

- 2. Would an independent audit required by Decision No. 64836 be unreasonably costly or operationally burdensome?**

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<sup>1</sup> Qwest response to DR 1.

Qwest provided a good faith estimate in response to Staff's STF 1.3 and STF 4.2 requests. Qwest stated that the estimated cost of \$140,000 and 6-8 weeks in estimated time could vary significantly depending on the selection of the independent third party consultant.

Based on an average expense of \$150 per hour, Staff estimates that the figures offered by Qwest represent between 900 and 1,000 hours in audit work, as much as 25 work weeks based on a 40 hour average. For the audit time to cover only 8 weeks would mean that 3 auditors would need to be utilized concurrently. The expense and time are consistent with other audits of which Staff is aware.

**3. Would the proposed audit supported by Qwest in its revised application be unreasonably costly and burdensome?**

Qwest provided a good faith estimate in response to Staff's STF 4.3 request. Qwest stated that the estimated cost of \$50,000 and 3-4 weeks in estimated time could vary significantly depending on the selection of the independent third party consultant.

**4. Is Qwest providing the equivalent loop qualification tools and service provided by Verizon, SBC and BLS?**

In its May 11, 2005 response to Qwest's March 29, 2005 application, Covad takes issue with the quality of Qwest's loop qualification tools by comparing what other RBOCs provide with tools of Qwest.

"Verizon provides Covad with weekly raw loop data extracts. SBC provides Covad with daily raw loop data extracts. Even better, BellSouth provides Covad with a real time loop data tool, similar to Qwest's own retail tool for its own customers."

Whether Qwest is simply required to provide the same loop qualification tools to CLECs that it provides to itself rather than tools literally comparable to those of Verizon, SBC and BLS appears to be an issue that was not fully discussed by Decision No. 64836.

"Staff notes that the CLECs dispute Qwest's claim that it provides the same comprehensive access to loop qualification data as is provided by Verizon and Southwestern Bell."<sup>2</sup>

"Staff believes Qwest has met its obligations as long as Qwest formalizes the details of its manual process in the SGAT, and includes all options available to CLECs which are functionally equivalent to those offered by Verizon and Southwestern Bell, including access to actual loop makeup information, access to

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<sup>2</sup> Decision No. 64836, page 14

theoretical or design loop make-up information or the ability to request a manual search of paper records to determine actual loop information in timely manner.”<sup>3</sup>

The reasonable equivalence of Qwest’s tools to those of other RBOCs appears to have been recognized by The Commission but not explicitly stated as a condition for approval.

**5. Is Qwest providing a real-time loop qualification tool for its own use but not for its wholesale customers?**

Issues of discrimination, as put forth by Covad<sup>4</sup>, are of serious concern to Staff. Covad even referenced concerns about discrimination in 15 areas of its 9 page October 4, 2005 response to Qwest’s revised application. Any concern voiced by the CLECs requires validation that can only be reasonably achieved by multiple sources (the number of CLECs), real examples of inequitable service (explicit dates and real examples) and/or an independent audit as required by Decision No. 64836.

Staff notes that only one CLEC has expressed a concern and even Covad has not offered any specific examples of inequitable service. At most, Covad points to suspicions of inequitable service possibly rendered to Microsoft, described by Covad as a Qwest ISP partner, and suspicions that Qwest is providing itself better service because it is capable of providing better tools, such as Verizon, SBC and BLS provide. Suspicions do not rise to the level of explicit dates and real examples of inequitable service.

Qwest stated in writing and in discussions with Staff and Covad that the CLECs have the same access and information options that are available within Qwest. The area of disagreement between Covad and Qwest concerns access and use of the Raw Loop Data Wire Center database (“RLDWC”). Qwest is unequivocal in its responses to Staff’s inquires regarding the same access by CLECs as that provided to Qwest employees :

“CLECs requesting ADSL capable unbundled loops use the ADSL Qualification tool to qualify a loop based on the published qualification characteristics defined in the applicable technical publication. CLECs also have access to the Raw Loop Data information (there is no qualification using these tools) for a specific TN(s) or address via IMA, and for an entire wire center via digital certificate. *Qwest personnel cannot use these tools to qualify a customer for Qwest DSL service.*”<sup>5</sup>  
(emphasis added)

“Qwest personnel do not have access to these files [RLDWC]. The only exception would be the specific personnel responsible for managing, maintaining and

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<sup>3</sup> Decision No. 64836, page 14

<sup>4</sup> Covad filing, May 11, 2005, page 3

<sup>5</sup> STF 2.2

troubleshooting the website where these files are made available for download.”<sup>6</sup>  
(*emphasis added*)

Without additional information, such as the independent audit required by Decision No. 64836 and advocated by Covad, Staff has no reason to believe that Qwest is discriminatory in providing more loop qualification access to Qwest employees than to the CLECs. In fact, the available evidence concerning access to the RLDWC suggests the opposite may be true. Accepted without validation, Qwest’s data request response indicates that the CLECs have access that even Qwest employees do not.

**6. Is Covad seeking an improved loop qualification tool that was not explicitly required by Decision No. 64836?**

As noted above, Qwest was not explicitly required to match the loop qualification access and information provided by other RBOCs. The intent of the independent audit is not to determine if Qwest’s service matches that of the other RBOCs but to determine if Qwest is providing non-discriminatory access. The underlying premise of Covad’s position is that Qwest can and should provide the loop qualification access and information provided by other RBOCs. Covad appears to hope that the independent audit required by Decision No. 64836 will eventually lead to voluntary loop qualification changes by Qwest or perhaps an order by the Commission requiring loop qualification access and information tools matching those available from the other RBOCs.

Covad has stated in conference call discussions that Qwest’s loop qualification options do not meet the needs of Covad’s “business model.” At issue, perhaps, is the state of Covad’s “business model” at the time that Decision No. 64836 was ordered. In response to Staff’s STF 3.2 request, Covad states that their business model has not changed since Decision No. 64836 was issued on 5/21/02, yet Covad goes on to state that “Since entry of the Order [Decision No. 64836], Covad’s reliance upon accurate and timely information from Qwest has increased. Covad has made commitments to its partners as to the accuracy of loop qualification information, i.e., the results from the processing (through Covad’s proprietary algorithms) of the raw loop data supplied by Qwest.”

If Covad’s business model has not changed its dependence on loop qualification does appear to have changed. Covad does appear to be seeking changes that were not explicitly required by Decision No. 64836.

**7. What are the consequences to Covad’s business if the independent audit required by Decision No. 64836 is waived, as requested by Qwest’s application on March 29, 2005, or limited in scope, as requested by Qwest’s revised application on September 6, 2005?**

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<sup>6</sup> STF 3.5

As stated in its 2004 Annual Report to the Commission, Covad serves REDACTED residence and REDACTED business lines in Arizona. Covad also states that its Arizona Intrastate Gross Operating Revenues<sup>7</sup> equal REDACTED while its Total Income from Arizona operations<sup>8</sup> equals REDACTED on a Value of Assets Used to Serve Arizona Customers<sup>9</sup> of REDACTED. This information leads Staff to several observations:

1. Few benefits from the loop qualification changes sought by Covad would accrue to Covad's residence customers since Covad serves primarily business customers in Arizona.
2. Covad believes it incurs additional expenses<sup>10</sup> of approximately REDACTED per month because of the loop qualification tools currently provided. Spread across Covad's Arizona customer base the additional expenses are significant, however, Staff cannot be certain from Covad's response to STF 3.5 that the additional expense information referenced by Covad is specific to Arizona.
3. What is much harder to estimate and may be ultimately more important is the resulting opportunity loss that accrues from Covad being unable to utilize its employees more effectively in new business opportunities if more adequate loop qualification tools were available, as claimed by Covad.

Staff sees little to suggest that Covad will suffer irreparable harm if the independent audit required by Decision No. 64836 is waived, as requested by Qwest's application on March 29, 2005, or limited in scope, as requested by Qwest's revised application on September 6, 2005.

**8. How does Qwest's revised application address the intent of the independent audit required by Decision No. 64836 and/or Covad's concerns?**

Qwest's revised application, if accepted, will have two results – (1) the waiver of the independent audit required by Decision No. 64836 and (2) the audit of a database that is characterized as a non-primary loop qualification tool by Qwest. Accepting the revised application means that the intent of the Commission's original decision, to determine if Qwest is providing non-discriminatory access to its loop qualification information and systems as discussed in Decision No. 64836, will be replaced by auditing the accuracy, due to update timing, of a single database, the RLDWC. In doing so, the focus of the audit is essentially shifted from non-discriminatory access to information accuracy. As Qwest states in its revised application:

“The lata file [RLDWC] is not one of the primary tools available to CLECs, by which Qwest makes available to CLECs the same loop qualification information to which any Qwest employee has access.”

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<sup>7</sup> Covad 2004 Annual Report, page 6; DSL revenues are considered Interstate

<sup>8</sup> Covad 2004 Annual Report, page 4

<sup>9</sup> Covad 2004 Annual Report, page 4

<sup>10</sup> Covad response to STF 3.5

Covad's response to Qwest's revised application is emphatic in its support for the independent audit required by Decision No. 64836. While Covad adds some confusion by the level of its dissatisfaction with the accuracy of the RLDWC, its primary concern appears to be with non-discriminatory access rather than information accuracy. As such, the revised application would not satisfy the intentions of independent audit required by Decision No. 64836 nor the concerns of Covad.

### **III. Staff's Conclusions**

1. Absent more detailed evaluation and analysis, no evidence exists to substantiate any discriminatory behavior on the part of Qwest related to its compliance with Decision No. 64836.
2. Covad's objections and corresponding support for the independent audit required by Decision No. 64836 are not supported by evidence of discriminatory loop qualification tools and service or evidence of Qwest's failure to meet its obligations within Decision No. 64836.
3. Covad's objections and corresponding support for the independent audit required by Decision No. 64836 are based on a desire for service not explicitly required by Decision No. 64836 nor requested by any other CLEC.
4. Covad estimates it incurs additional expenses<sup>11</sup> of approximately REDACTED per month as a result of the loop qualification processes currently used.
5. While Covad's business model may not have changed since Decision No. 64836 was issued, its dependence on loop qualification does appear to have changed.
6. All CLECs, including Covad, have had ample time and available processes by which to raise loop qualification objections since Decision No. 64836 was ordered. Only Covad has raised any objections and, even so, waited until Qwest filed its March 29, 2005 waiver to raise an objection before the Commission.
7. The good faith estimates provided by Qwest for the independent audit in Decision No. 64836 and proposed audit in Qwest's revised application appear to be reasonable.
8. Accepting Qwest's revised application would waive the independent audit required by Decision No. 64836 while shifting the focus from non-discriminatory access to information accuracy.
9. Qwest accepted the independent audit condition within Decision No. 64836 ordered on May 21, 2002. Qwest must have assumed its full compliance and anticipated acceptable results. While the Commission is free to consider new information at any

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<sup>11</sup> Covad response to STF 3.5



time, there is no evidence in Decision No. 64836 that Qwest attempted to make its acceptance of the independent audit conditional on compliance and results.

#### IV. Staff's Recommendations

1. Although the claims of discriminatory behavior suggested by Covad have not been substantiated, Staff generally agrees that the intent of the independent audit condition in Decision No. 64836 was to determine if Qwest is providing CLECs with non-discriminatory access to its loop qualification information and systems.

“Qwest shall provide to CLEC, on a *non-discriminatory basis*, access to the information contained in Qwest's records, back office systems and databases where loop or loop plant information, including information relating to spare facilities resides, that is accessible to any Qwest employee or any affiliate of Qwest. An audit shall be conducted by an independent third party selected by the Commission eighteen months after approval of Qwest's Section 27 1 application, of Qwest's company records, back office systems and databases to determine that Qwest is providing the same access to loop and loop plant information to CLECs to which any Qwest employee has access.”<sup>12</sup> (*emphasis added*)

Qwest's statements of compliance and good results are not discounted by Staff. There is, however, no way to make an independent determination without an actual audit. Staff does not take lightly the audit expense estimates offered by Qwest, however, Staff has reason to believe that the expenses and effort can be limited through the audit selection processes with which Qwest has experience and expertise. Most importantly, Staff has no reason to assume that an independent audit is operationally burdensome. Staff believes the audit should be conducted as described in Decision No. 64836.

2. The primary purpose of the independent audit required by Decision No. 64836 is to provide findings related to the loop qualification access available to the CLECs and Qwest employees. The primary purpose is not to support the development of a new loop qualification tool that only one CLEC advocates. Should Covad remain interested in changes to loop qualification tools provided by Qwest to CLECs and Qwest employees, Covad can make use of the change processes available to it via its interconnection agreement and collaborative CLEC processes. Although the independent audit required by Decision No. 64836 may not satisfy or address all of Covad's concerns, Staff believes the audit should satisfy the scope and purpose originally intended when ordered on May 21, 2002. The independent audit results, however, may provide useful insights for loop qualification changes that Covad and other CLECs may chose to pursue directly with Qwest.

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<sup>12</sup> Decision No. 64836, pages 11 - 12